



Legal Department

Sam Antar
Vice President
Law & Regulation

November 28, 1995

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Hand Deliver

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

NOV 29 1995

Re: En Banc Hearing on Digital Television
MM Docket No. 87-268

Dear Mr. Caton:

In connection with the appearance of Alan N. Braverman, Vice President & General Counsel, Capital Cities/ABC, Inc., at the en banc hearing, I am enclosing an original and nine copies of Mr. Braverman's prepared remarks along with a speaker biography and description of Capital Cities/ABC, Inc.

By copy of this letter, I am submitting 10 copies of the same materials to the Policy and Rules Division, Mass Media Bureau.

Very truly yours,

Sam Antar
SmK
Sam Antar

SA:mrg
Enclosures

cc: Mr. Saul Shapiro
Mass Media Bureau
Policy & Rules Division

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Capital Cities/ABC, Inc.

Capital Cities/ABC, Inc. is a broad-based communications company with significant holdings here and abroad. It operates the ABC Television Network and ten television stations, eight network radio program services and 21 radio stations. It is a major supplier of cable television programming through its interests in ESPN, Lifetime and A&E Television Networks. The Company also publishes seven daily and numerous weekly newspapers, as well as various specialized trade and business periodicals and books. It has significant, growing interests in international broadcast and cable ventures.

On July 31, 1995, The Walt Disney Company and Capital Cities/ABC announced an agreement to merge the two companies. The transaction, which is subject to the approval of the shareholders of both companies and the FCC, is expected to be completed in early 1996.

CAPITAL CITIES/ABC, INC.

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ALAN N. BRAVERMAN

**Vice President and General Counsel
Capital Cities/ABC, Inc.**

Alan N. Braverman was named Vice President and General Counsel, Capital Cities/ABC, Inc., in October, 1994. Mr. Braverman has broad responsibilities for the operation of the legal department and for the Corporation's legal affairs.

Mr. Braverman had been Vice President and Deputy General Counsel since November 1993. He joined Capital Cities/ABC, Inc. from the Washington, D.C. law firm of Wilmer, Cutler & Pickering, where he started in 1976. He became a partner in 1983, specializing in commercial and administrative litigation. Before joining Wilmer, Cutler & Pickering, Mr. Braverman was a law clerk to the Honorable Thomas W. Pomeroy, Jr., Justice, Pennsylvania Supreme Court.

Mr. Braverman received a B.A. degree from Brandeis University in 1969 and subsequently worked for two years as a Vista Volunteer in Gary, Indiana. In 1975, he received a J.D. degree summa cum laude from Duquesne University in Pittsburgh, where he was also editor-in-chief of the Law Review.

A native of Boston, Massachusetts, he is married to Colleen Carroll.

1995-1996

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Prepared Remarks
of
Alan N. Braverman,
Vice President & General Counsel
Capital Cities/ABC, Inc.

FCC En Banc Hearing
on Digital Television

MM Docket No. 87-268

December 12, 1995

My name is Alan Braverman. I am Vice President and General Counsel of Capital Cities/ABC and I am here to present our company's views about the public interest questions that surround whether, and subject to what conditions, broadcasters should temporarily be lent an additional 6 MHz channel to permit a transition to free over-the-air digital television. It is our view that broadcasters should be lent the 6 MHz to effect a transition to digital and that the FCC should take such steps as are necessary to afford HDTV a fair market test, and to facilitate a prompt transition.

Eight years ago the FCC determined that the public interest would best be served by affording broadcasters the means to upgrade this country's free over-the-air broadcast system. Five years ago the Commission committed to HDTV -- the highest quality picture and sound that was technologically possible -- to advance the Commission's goal of ensuring excellence in television service. It was a prescient determination. Broadcasters had to have the capacity to offer such a service to the public to remain a relevant and commercially viable alternative to competing sources of video delivery to the home. That fact remains as true today as it was then.

The Commission outlined a plan to accomplish this upgrade.

Since broadcasters could not simultaneously transmit both the traditional NTSC signal and the upgraded signal on the same channel, broadcasters had to be temporarily lent a channel for a transition period -- a period long enough to enable the public to replace their existing NTSC sets with sets capable of receiving the upgraded transmissions. At the end of the transition period one channel would be returned.

The Commission's decision to upgrade free over-the-air television effectively challenged private industry, including broadcasters, to solve two daunting technological hurdles: How to transmit in a 6 MHz channel the vast amount of information required for HDTV quality picture and sound. And, how to use for that purpose the 6 MHz channels in the 402 MHz band that had historically been left vacant to prevent undue interference among existing NTSC stations.

Guided by the Commission's Advisory Committee, private industry answered the challenge. After years of work and millions of dollars of investment, it found a way to enable broadcasters to transmit an HDTV quality signal in the 6 MHz interference buffers in the 402 MHz television band. While the goal was accomplished, the means by which the problems were solved changed over time. What started out as an analog approach

evolved into a digital solution with all of the potential for flexibility that digital technology allows.

Some now have asked whether this change in the means should cause the Commission to reexamine the end itself. They ask whether the fact that the Grand Alliance system is capable of accomplishing other objectives should cause the Commission to reconsider the objective for which it was invented -- whether the fact that other things can now be done with the spectrum somehow undermines the Commission's original judgment that the public interest would be served by lending a channel to broadcasters to enable them to upgrade their service to the highest quality sound and picture that are technologically attainable.

I think not. Just as it was true eight years ago, it is true today that the public is entitled to have such technologically superior services made available through our established free over-the-air system. Just as it was true eight years ago, the ability to offer such video service to the public remains vital to the continued viability of free over-the-air broadcasting. Indeed, as the Chairman himself pointed out in a speech several weeks ago "it seems clear that the new technologies are converting to digital far more quickly than anyone had imagined." I agree with the Chairman, but the

importance of his observation is that it underscores how urgent it is for broadcasters to be able to offer a competitive digital service. These new technologies will compete for viewers by fully exploiting digital's revolutionary potential for improved picture quality and sound. Free over-the-air broadcasting will wither if it is forced to meet that competition through technologically stale NTSC offerings. And the public interest is hardly enhanced by limiting these digital breakthroughs to only the video-by-subscription world. At a time when we as a country are legitimately concerned about creating information have's and have not's, it simply makes no sense to deprive broadcasters of the means of providing the public an opportunity to have such enhanced video offerings available at no charge.

For the transition to digital to be successful, it must be properly managed. To that end, we believe that the Commission should establish both a minimum HDTV requirement and a simulcast requirement. Some have described this proposal as a request for micromanagement. But we don't think that such a characterization is apt. To the contrary, we view these steps as necessary to accomplishing two of the Commission's prime objectives: to assure that HDTV receives a fair test in the marketplace and to shorten the transition so that one channel can be returned as

promptly as possible for other uses.

We have set out at length the reasons for our position in our Comments to the Fourth Notice of Proposed Rule Making. To summarize them briefly here, we feel quite strongly that there cannot be a fair market test of public acceptance of HDTV in the absence of a prescribed minimum number of hours of HDTV programming. HDTV will be launched from a cold start. No homes are equipped today with sets capable of displaying HDTV programming. And set penetration is unlikely to increase in advance of a steady supply of HDTV programs to view. Consumers will simply have no incentive to buy such sets unless a sufficient amount of HDTV programming is being offered to make the purchase of the sets worthwhile. For HDTV to be given a fair test, therefore, investment in programming must precede the development of a market for it. Given that broadcasters will need to make that investment in advance of an established audience for the service, we believe that the only way to assure that such investments will be made is to impose a minimum. Later in the transition, once there has been an adequate test of the public's reaction to HDTV, the Commission could revisit the requirement and either increase it or decrease it as is appropriate.

We advocate a simulcasting requirement for similar reasons. First it most directly accomplishes what the Commission set out to achieve--an upgrade of our existing free over-the-air service. Second, the imposition of the requirement is the step most likely to lead to an expedited transition. We believe that the engine that will drive the purchase of digital sets is the availability in digital quality of the popular over-the-air programming that commands the overwhelming share of audience today. At the same time, simulcasting does not rule out experimentation with the ATV channel to offer other services to test the public appetite for such services.

I would like to address one last point. Some have characterized the loan of additional spectrum to broadcasters as a windfall that requires, as a quid pro quo, a governmentally defined and mandated increased public interest obligation. We disagree. At Capital Cities/ABC, we are proud of our record of operating our existing stations in the public interest. And, like all broadcasters, we very much understand and expect that we will be held to the same public interest standard in the use of the digital spectrum, both during the transition and after the giveback. And it is conceivable that the flexibility that digital transmission affords will enable broadcasters to find new

and creative ways of meeting that important obligation. But we see no reason why the transition to digital should, in and of itself, cause the government to mandate changes in the public interest standard that broadcasters have observed for the past 40 years.

In closing, we believe that the public interest would be served by lending broadcasters a new channel to enable them to upgrade our free over-the-air system and thus to offer the public the highest possible picture and sound quality. The means we propose to that end does require the Commission affirmatively to manage the transition. But we believe that the Commission faces a very difficult challenge in introducing an entirely new and world-leading technology, and that broadcasters, as well as all the other affected industries--including cable and TV set manufacturers--should be prepared to accept such management to make the transition work.